

LAW

Va. pipeline tests landmark environmental justice ruling

Niina H. Farah, E&E News reporter • Published: Monday, June 14, 2021



A warning sign for the Mountain Valley pipeline is pictured in front of a home near Elliston, Va., in this Sept. 30, 2019, file photo. Charles Mostoller/Reuters/Newscom

After spending about a year sidelined by the coronavirus pandemic, Elizabeth Jones is gearing up for a renewed fight against a natural gas project near her home.

"It wasn't possible to do much," said Jones, 75, noting that residents in her rural Virginia county have mostly kept to themselves to avoid contracting COVID-19.

Now, as vaccines are distributed and caseloads are dropping, Jones is teaming up with conservation groups like the Chesapeake Bay Foundation to fight a new potential health threat to her community: a planned compressor station along the Mountain Valley pipeline.

"We are concerned about what this compressor will leave behind," she said, adding that her 82-year-old husband, Anderson, has asthma.

The looming conflict over the proposed Lambert Compressor Station in the low-income and majority Black Banister District of Virginia's Pittsylvania County is set to test the impact of a watershed court ruling last year on environmental justice.

The facility, part of Mountain Valley's Southgate expansion, would help propel natural gas from the still-incomplete 303-mile pipeline from West Virginia to Virginia an additional 75 miles south to North Carolina.

It would be situated within a half-mile of two other facilities just like it, according to an analysis by Mountain Valley developers.

Critics of the project say developers and the government have not done enough to examine the localized health risks of emissions and damage from the proposed facility to the Banister District, obscuring the project's potential environmental justice harms.

Development of the Lambert Compressor Station follows a ruling last year from the 4th U.S. Circuit Court of Appeals that rejected a permit for a similar facility for failing to carefully study impacts to a community established by freed slaves at the end of the Civil War.

The 4th Circuit decision has had ripple effects for Virginia's approach to considering the disproportionate harm of infrastructure development on low-income and minority residents.

Now opponents like Jones are drawing attention to a similar pattern emerging with Mountain Valley's Lambert Compressor Station and are calling for state regulators to follow the 4th Circuit's precedent.

Nineteen years ago, the Joneses moved to their 57-acre property, where they grow loblolly pines for timber. Anderson Jones had wanted to return to the land where his Black and Native American ancestors lived for

generations.

Jones and her husband's century-old family farm is already within a quarter mile of one Williams Transcontinental Gas Pipe Line Co. compressor station. The distance of the Lambert facility from the couple's property isn't clear, although Mountain Valley has said the nearest residence would be about a half-mile from the compressor station.

The Joneses have already seen impacts on their land after Mountain Valley took a 170-foot-wide swath of their property and cut down timber stands. Some of the pipe has already been buried, while other segments remain aboveground after North Carolina regulators blocked further work on the project.

Jones has been working to raise community awareness about the compressor station, even as she and her husband spend much of the year in Florida.

The potential health effects of adding a new facility to the community are unclear — as is the touted financial benefit from the project, said Jones, who is the chair of the environmental justice committee for the Pittsylvania County NAACP.

"There is all this talk about the money that they bring," she said of the compressor station.

She added: "I have seen none of it."

A landmark ruling

Jones and other project opponents are preparing to urge the Virginia Air Pollution Control Board to deny a state permit for the Lambert station during a July 7 public meeting on the project.

The board will consider the comments before either accepting or rejecting the recommendation for approval from the Virginia Department of Environmental Quality.

They hope Virginia regulators will be swayed by the project's similarities to a compressor station in Buckingham County, Va., that would have moved gas along the now-canceled Atlantic Coast pipeline but suffered a major blow in the 4th Circuit last year ([Greenwire](#), Jan. 7, 2020).

In the Buckingham battle, the 4th Circuit found that Virginia regulators had failed to "analyze the character" of the population in the nearby Union Hill community — which project opponents demonstrated through door-to-door surveys was 85% Black in the mile immediately surrounding the planned compressor station.

The state agency had also improperly relied on evidence that was either incomplete or refuted by later findings, according to the court.

Judges for the 4th Circuit also said Virginia regulators had failed to tailor their consideration of environmental impacts to the specific community. Instead, they relied on compliance with EPA's National Ambient Air Quality Standards (NAAQS) and state emissions standards to determine the likely degree of harm from the compressor station.

"Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station — an overwhelmingly minority population according to the Friends of Buckingham Survey — will be affected more than those living in other parts of the same county," the court wrote in its January 2020 opinion.

The 4th Circuit decision was significant because the court found that environmental justice was "not just a box to be checked," said Taylor Lilley, a Chesapeake Bay Foundation environmental justice attorney leading opposition to the Lambert compressor station.

"And if we look to nothing more than these broad standards, then we are doing nothing more than just checking a box," she said. "We're not actually considering the character and degree of injury that would come for these individuals or for these communities."

Lilley noted "glaring" similarities between the Buckingham and Lambert stations.

Like the Buckingham project, the Lambert station would be located in a community with strong ties to its African American history and to the descendants of slaves, she said.

Lilley and other critics of the project say that the full impact of the Lambert station is not evident from the MVP's review of environmental impacts because the company chose to center its analysis on a 1-mile radius around the proposed facility.

MVP Southgate has defended its efforts to reduce the impact of the Lambert compressor station on Banister District residents.

The project has been designed with "state-of-the-art technologies to reduce emissions and protect air quality," said spokesperson Shawn Day in an emailed statement.

The company has been working with community members to minimize environmental harm and prevent adverse impacts on air quality near the compressor station, he said.

"Rigorous and detailed analysis has concluded the design includes measures that far exceed permitting requirements and raises the bar for environmentally responsible development of compression facilities," said Day.

Assessing impact

Mountain Valley's reliance on NAAQS to demonstrate the Lambert station's minimal impact echoes legal arguments from backers of the failed Buckingham project.

Federal officials found that degraded air quality would be a problem only in the area immediately around the Lambert facility, according to a [final environmental impact statement](#) completed by FERC in February 2020.

The agency identified two environmental justice populations within that immediate 1-mile radius. FERC noted that the choice of location for compressor stations was generally based on "engineering factors" related to the design of the pipeline system.

"Additionally, the collocation of natural gas pipelines and associated facilities with existing rights-of-way is frequently a consideration to avoid and minimize impacts on the environment," FERC wrote.

In discussing the impact of the entire Southgate expansion, FERC acknowledged that vulnerable populations could be more affected than the general population during both the construction and operation phases of the project.

"However, our analysis determined that the air quality impacts on all populations, including environmental justice communities, would not be significant," FERC wrote. "Therefore we conclude that there would be no high and adverse impacts to the local environmental justice communities."

But extending the analysis to a 3-mile radius revealed two environmental justice communities; at a 5-mile radius, there were four communities, and at a 10-mile radius there were 10 communities, according to the Chesapeake Bay Foundation.

"MVP has not provided us with accurate and up-to-date data to determine what those impacts will be," said Lilley, "and that simply flies in the face of the Buckingham decision."

'We can't build anything'

Although Mountain Valley's Southgate expansion is currently on ice, the company has given no indication that it has given up on the project — or the Lambert Compressor Station.

Day, the MVP Southgate spokesperson, said the developer plans to begin construction on the expansion project at the start of 2022, with an in-service target of spring 2023.

Earlier this year, a federal appeals court ordered North Carolina regulators to reassess a rejected water quality permit for the Southgate expansion. The decision could restart work on the project ([Energywire](#), March 12).

In the interim, Jones said, she is unable to access the section of her property that Mountain Valley has seized.

"They have taken part of our century-old farmland," she said. "Now we can't build anything on it. They tell us that we can barely walk over it."

Jones worries that the pipeline company will dig up Native American artifacts that are known to be in the area, or disturb an unmarked burial ground that residents believe holds the unidentified remains of enslaved people and Native Americans.

Promises of job creation spurred by infrastructure development meanwhile haven't materialized, she said.

"They talk about hundreds of people or thousands of people who were supposed to be getting jobs," she said. "They tell us things, but they don't do things, and that's what the problem is."

Jones has a long history of getting involved in her community, including a failed 2014 bid to win a seat in the Virginia House of Delegates as a Democrat in a Republican district.

The coronavirus pandemic has made rallying her neighbors against the Lambert Compressor Station a challenge, but Jones said she is still determined to make sure the facility is never built.

"This so-called project has been doing nothing but undermining our property values, our health," she said. "And we need to do something about it."

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